

§ 359.201

Subpart H—Furloughs in the Senior Executive Service

- 359.801 Agency authority.
- 359.802 Definitions.
- 359.803 Competition.
- 359.804 Length of furlough.
- 359.805 Appeals.
- 359.806 Notice.
- 359.807 Records.

Subpart I—Removal of Noncareer and Limited Appointees and Reemployed Annuitants

- 359.901 Coverage.
- 359.902 Conditions of removal.

AUTHORITY: 5 U.S.C. 1302, 3302, and 3596, unless otherwise noted.

SOURCE: 54 FR 18876, May 3, 1989, unless otherwise noted.

Subpart A [Reserved]

Subpart B—General Provisions

§ 359.201 Regulatory requirements.

This part contains the regulations of the Office of Personnel Management (OPM) that implement subchapter V of chapter 35 of title 5, United States Code, on the Senior Executive Service (SES).

§ 359.202 Definitions.

Agency, Senior Executive Service position, senior executive, career appointee, limited emergency appointee, limited term appointee, and noncareer appointee, are defined in 5 U.S.C. 3132(a).

Probation and probationary period mean the 1-year probation required by 5 U.S.C. 3393(d) upon initial career appointment to the SES.

Reemployed annuitant means an individual who is receiving an annuity under the Civil Service Retirement System or the Federal Employees' Retirement System on the basis of his or her former Federal service. A reemployed annuitant serves at the pleasure of the appointing authority.

Subpart C [Reserved]

5 CFR Ch. I (1–1–16 Edition)

Subpart D—Removal of Career Appointees During Probation

§ 359.401 General exclusions.

This subpart does not apply to the removal of a career appointee during probation when—

(a) The action is initiated under 5 U.S.C. 1206(g) or 5 U.S.C. 7542;

(b) The removal is effected under subpart C of this part for failure to be recertified; or

(c) The appointee is a reemployed annuitant. See subpart I of this part for removal of a reemployed annuitant.

[56 FR 172, Jan. 3, 1991]

§ 359.402 Removal: Unacceptable performance.

(a) *Coverage*. This section covers the removal of a career appointee from the SES during the probationary period for unacceptable performance.

(b) *Basis for action*. A removal under this section need not be based upon a final rating under the agency's SES performance appraisal system established under subpart C of part 430 of this chapter. Even if a removal is based on such a rating, the removal action is taken under this section.

(c) *Procedures*. The agency shall notify the appointee in writing before the effective date of the action. The notice shall, as a minimum—

(1) State the agency's conclusions as to the inadequacies of the appointee's performance;

(2) State whether the appointee has placement rights under § 359.701 and, if so, identify the position to which the appointee will be assigned; and

(3) Show the effective date of the action.

§ 359.403 Removal: Conduct.

(a) *Coverage*. (1) This section covers the removal of a career appointee from the SES during the probationary period for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

(2) This section does not apply, however, when the appointee was covered under 5 U.S.C. 7511 immediately before appointment to the SES. In that case,